



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF:

Inventor : Mitchell R. Swartz

Serial no. 09/750, 480

PAPER:

Group Art Unit: 3641

Examiner: R. Palabrica

Filed: 12/28/00

For: **METHOD AND APPARATUS**

TO MONITOR LOADING

USING VIBRATION

This is a continuation of Serial no. 07/371,937

Filed: 06/27/89

Commissioner for Patents

Alexandria, VA 22313-1450

October 19, 2004

DECLARATION OF DR. MITCHELL SWARTZ

I, Mitchell R. Swartz, declare that I am a citizen of the United States of America and the inventor of the invention described in the above-entitled application.

1. I have a background in electrical engineering, material science, electrochemistry, and medicine, and have worked in this field for more than a decade, and have worked on experimental projects at the Massachusetts Institute of Technology, Massachusetts General Hospital and elsewhere. I have published more than forty peer reviewed papers in cold fusion, including those which prove the present invention works as taught in the above-entitled original specification and claims.

2. I received the Office's Notice of Noncompliance, mailed September 27, 2004. (cover as Exhibit "A", attached). There are many errors, and a few a listed below.

3. The Office's notification states,

"5. The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6))."

Simply put, the brief does contain a concise statement of the issues presented for review consistent with 37 CFR 1.192(c)(6). They are listed on page 12 of the Appeal Brief.

4. The Office's notification states,

"6. A single ground of rejection has been applied to two or more claims in this application, and (b) the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief."

The Office is wrong for several reasons. To prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was first discussed on page 13 in the Appeal Brief in the Grouping of Claims section. Despite the false statement, said arguments in support of the fact that the claims do not stand or fall together are explicitly discussed on page 14 of the Argument section for 35 U.S.C. 112 (first paragraph). Despite the false statement, said arguments in support of the fact that the claims do not stand or fall together are explicitly discussed on page 57 and 58 of the Argument section for 35 U.S.C. 112 (second paragraph). Despite the false statement, said arguments in support of the fact that the claims do not stand or fall together are explicitly discussed on page 71 of the Argument section for 35 U.S.C. 102. Despite the false statement, said arguments in support of the fact that the claims do not stand or fall together are explicitly discussed on page 86 of the Argument section for 35 U.S.C. 103. Despite the false statement, said arguments in support of the fact that the claims do not stand or fall together are explicitly discussed on page 106 of the Argument section for 35 U.S.C. 101.

Signature of Inventor:



Mitchell R. Swartz, ScD, MD

I declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true.

Signature of Inventor:
October 19, 2004



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UNITED STATES PATENT AND TRADEMARK OFFICE

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Please find below and/or attached an Office communication concerning this application or proceeding.

EXHIBIT "A"